REMARKS/ARGUMENTS

Claims 1, 2, 4-7, 9-21 and 25 are present in this application. By this Amendment, claims 1, 4, 5, 9, 10, 12-14, 19, 20 and 25 have been amended, and claims 3, 8, 22 and 23 have been canceled. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Claims 1-23 and 25 were rejected under 35 U.S.C. §112, second paragraph. This rejection is respectfully traversed.

The Office Action contends that the word "if" is a conditional statement "that suggests (or requires) alternative limitation(s), step(s) and/or methods to be also presented in the independent claim." Applicant respectfully submits, however, that this contention is inaccurate. The word "if" is indeed a conditional statement that presupposes a secondary part upon the occurrence/inclusion of a primary part (i.e., if A, then B). An alternative consequence is neither suggested nor required by the use of the term. It is well settled that a claim incorporating the term "comprising" is an open-ended claim, and nothing in U.S. patent law requires that if a conditional feature is recited, that an alternative feature must be recited in the event that the condition does not exist. In this context, Applicant respectfully submits that the Office Action is confusing breadth with indefiniteness. It is well settled that mere breadth does not equate to indefiniteness. See, for example, *In re Miller*, 441 F.2d 689 (CCPA 1971).

With regard to claims 8 and 9, the Office Action questions the use of the phrase "theoretical price point." The term "theoretical" is described in the present specification

at, for example, paragraph [0042]. Applicant submits that those of ordinary skill in the art would readily appreciate meaning of the phrase "theoretical price point" with reference to the specification. In answer to the Examiner's queries, "theoretical price point" is a price point generated by the system that is above the buyer's upper limit bid and below the seller's lower limit price, e.g., when an overlap region does not exist. The difference between a "theoretical" price point and an "actual" price point in the practice of the invention is described in the specification. As noted, one is a price point generated by the system when an overlap region *does not* exist (theoretical) and the other is a price point generated by the system when an overlap region *does* exist (actual).

With regard to claim 11, the Office Action contends that the application "fails to disclose steps on how the provided component prevents gaming." This feature of the invention is also described in the specification at, for example, paragraph [0006] and paragraph [0033]. For example, one way of preventing gaming includes penalizing the party in terms of price, time or both in arriving at a theoretical price point. The system may also include provisions to limit a number of bids allowed per product, provisions to require that subsequent bids upon the occurrence of a shortage region can only deviate from an original bid by a certain percentage, etc.

Applicant respectfully submits that the claims satisfy the requirements of 35 U.S.C. §112, second paragraph. Withdrawal of the rejection is respectfully requested.

Claims 1-23 and 25 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,749,785 to Rossides in view of U.S. Patent No. 6,415,270 to Rackson. This rejection is respectfully traversed.

Without conceding the propriety of the rejection, claim 1 has been amended generally to include the subject matter of claim 8. In this context, on page 6, the Office Action merely mimics the language of claim 8 and broadly references Rossides at column 40, line 60 – column 42, line 37. This section of the Rossides patent describes a "split the difference" method for presenting a bet offer. The only reference in this section to an instance where no overlap region exists appears in column 41, lines 33-35, wherein the patent only describes that in such an event "the bet is not struck." In contrast, the invention provides a mechanism for further processing the transaction even when an overlap region does not exist by setting a theoretical price point between the lower limit price and the upper limit bit. As described in the specification, the parties to the transaction can then unilaterally decide whether the proposed theoretical price point is acceptable, and if not, terminate the transaction. Rossides lacks even a remote suggestion of providing such an option, and for at least this reason, Applicant submits that the rejection is misplaced.

Independent claims 19 and 20 have been amended to include similar subject matter.

With regard to claim 17, although claim 17 is included in the list of rejected claims on page 3 of the Office Action, the subject matter of claim 17 is not addressed in the

Office Action. Step (b) of claim 17 defines the step of receiving an upper limit bid for the product from the buyer, wherein step (b) is practiced by allowing only one bid for the product from the buyer. The sections of Rossides referenced by the Examiner are silent with regard to this subject matter. Without a specific indication of this possibility, Applicant respectfully submits that the rejection is misplaced. See, for example, *Continental Can Co. U.S.A. v. Monsanto Co.*, 948 F.2d 1264 (Fed. Cir. 1991) ("Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.").

Claims 13 and 14 have been rewritten in independent form by this Amendment. Claim 13 recites a step of receiving a lower limit price range from the seller that varies with time. In a similar context, claim 14 recites the step of receiving an upper limit bid range from the buyer that varies with time. The Office Action references Rossides again at column 40, line 60 – column 42, line 37, including a reference to "*deadline*." The inclusion of a deadline in the Rossides method relates to a deadline input by the first user for submission of an offer on the opposite side (see, column 41, lines 21-23). Nowhere does Rossides even remotely suggest that a bet offer of the first user or an opposing offer of a second user varies with time. Rather, when the deadline is reached, generally the transaction is terminated. Dependent claims 15 and 16 define related subject matter.

Additionally, claim 25 has been amended to define a step of receiving an expiration relating to the product and receiving at least one of a lower limit price range from the seller or an upper limit bid range from the buyer that varies with time to the

expiration. The preamble of claim 25 defines a method of conducting a transaction between a buyer and a seller . . . for exchange of a product of decaying value. Thus, as described in the specification, as the product value is decaying, buyers and sellers may be willing to pay/receive more or less until expiration (e.g., when the product becomes valueless). Claim 25 additionally recites the step of comparing the seller lower limit price and the buyer limit bid relative to time. As a consequence, although an overlap region may not exist initially, with a varying price range and/or a varying bid range, an overlap region may exist at some time closer to the established expiration. This advantageous feature of the invention is neither disclosed nor remotely suggested in the Rossides patent.

The Rackson patent does not correct the deficiencies noted with regard to Rossides. That is, neither Rossides nor Rackson provides any suggestion to modify the Rossides teachings to meet at least those features noted above as lacking in the Rossides patent.

With regard to the dependent claims, Applicant submits that these claims are allowable at least by virtue of their dependency on an allowable independent claim. In addition, dependent claims 15 and 16 are discussed above. With regard to dependent claim 18, the Office Action again references Rossides at column 40, line 60 – column 42, line 37. Claim 18, however, defines the step of compiling a database of information relating to sellers, buyers, products and price points. As described in the specification, such price points could be used as invaluable marketing tools for buyers and sellers using

the system of the invention or for individuals that buy and sell such products. Rossides is silent with regard to any such database compilation. Rather, in the section referenced by the Examiner, Rossides merely describes its "split the difference" method for presenting a bet offer.

Reconsideration and withdrawal of the rejection are respectfully requested.

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

Respectfully submitted,

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